

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATHALIE THUY VAN,
Plaintiff,
v.
LANGUAGE LINE, LLC,
Defendant.

Case No. 14-CV-03791-LHK

ORDER DENYING MOTION TO SEAL

Re: Dkt. No. 273

Before the Court is Plaintiff Nathalie Thuy Van's ("Plaintiff") renewed motion to seal an exhibit filed in support of Plaintiff's motion for summary judgment. ECF No. 273. "Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Thus, when considering a sealing request, "a strong presumption in favor of access is the starting point." *Id.* (internal quotation marks omitted).

Parties seeking to seal judicial records relating to motions that are "more than tangentially related to the underlying cause of action," *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016), bear the burden of overcoming the presumption with "compelling reasons

supported by specific factual findings” that outweigh the general history of access and the public policies favoring disclosure, *Kamakana*, 447 F.3d at 1178–79. Compelling reasons justifying the sealing of court records generally exist “when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Id.*

Records attached to motions that are “not related, or only tangentially related, to the merits of a case,” are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action.” (internal quotation marks omitted)). Parties moving to seal records attached to motions unrelated or only tangentially related to the merits of a case must meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure. *Ctr. for Auto Safety*, 809 F.3d at 1098–99; *Kamakana*, 447 F.3d at 1179–80. The “good cause” standard requires a “particularized showing” that “specific prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that “[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over

competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972) (quoting Restatement (First) of Torts § 757 cmt. b). “Generally [a trade secret] relates to the production of goods. . . . It may, however, relate to the sale of goods or to other operations in the business. . . .” *Id.* (ellipses in original). In addition, the U.S. Supreme Court has recognized that sealing may be justified to prevent judicial documents from being used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598.

In addition, parties moving to seal documents must comply with the procedures established by Civil Local Rule 79-5. Pursuant to that rule, a sealing order is appropriate only upon a request that establishes the document is “sealable,” or “privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).” *Id.* Civil Local Rule 79-5(d), moreover, requires the submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable material” and that “lists in table format each document or portion thereof that is sought to be sealed,” as well as an “unredacted version of the document” that “indicate[s], by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” *Id.* R. 79-5(d)(1).

Here, Plaintiff seeks to seal Exhibit 65 attached to Plaintiff’s motion for summary judgment. *See* ECF No. 211 (Plaintiff’s Motion for Summary Judgment); ECF No. 217-3 (Exhibit 65). As Plaintiff’s motion for summary judgment is a dispositive motion related to the merits of Plaintiff’s claims, the “compelling reasons” standard applies to Plaintiff’s motion to seal. *See Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 679–80 (9th Cir. 2009) (applying “compelling reasons” standard to a motion to seal documents attached to summary judgment motion); *Fujitsu Ltd. v. Belkin Int’l, Inc.*, 2012 WL 6019754, at *3 (N.D. Cal. Dec. 3, 2012) (same).

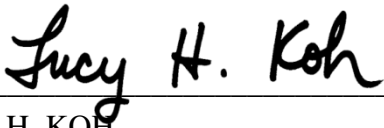
With this standard in mind, the Court DENIES Plaintiff’s motion to seal. Exhibit 65 includes several documents designated as confidential by non-party AT&T Corporation, including a resolution adopted in lieu of a meeting of the board of directors and emails announcing the sale of the business AT&T Language Line. However, AT&T Corporation has not filed a declaration

1 seeking that the documents remain confidential, even though Plaintiff filed a certificate of service
2 indicating that AT&T Corporation received notice of Plaintiff's renewed motion to seal. *See* ECF
3 No. 278. Thus, the Court has no basis to conclude that the information in Exhibit 65 is sealable.
4 In addition, the terms of the actual sale of AT&T Language Line are already public. ECF No.
5 220-3 to ECF No. 220-7. Accordingly, the Court does not find "compelling reasons" to seal
6 Exhibit 65.

7 Within fourteen (14) days of the date of this order, Plaintiff shall, consistent with the above
8 ruling, publicly re-file Exhibit 65.

9 **IT IS SO ORDERED.**

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11 Dated: July 29, 2016

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14 LUCY H. KOH
15 United States District Judge
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